IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1016 OF 2018
WITH
INCOME TAX APPEAL NO. 1026 OF 2018

Pr. Commissioner of Income }
Tax-19, R.No. 228, Matru Mandir, }
Tardeo Rd, Mumbai – 400 007 } ...Appellant

Versus

Vishwashakti Construction }
Room No. 20/21, 1st floor, 10, }
Atul Niwas, 7th Khetwadi Lane, }
Mumbai – 400 004 } ...Respondent

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Mr. Suresh Kumar, Advocate for the Appellant.
Ms. Neelam C. Jadhav, Advocate for the Respondent.

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CORAM : DHIRAJ SINGH THAKUR AND KAMAL KHATA, JJ.

PRONOUNCED ON : 4th MAY, 2023.

J U D G M E N T

PER DHIRAJ SINGH THAKUR, J.:

. Both these appeals have been preferred under Section 260A of the Income Tax Act, 1961 ("the Act") challenging the order dated 20th January, 2017 passed by the Income Tax Appellate Tribunal, Bench ‘F’, Mumbai (“ITAT”), for the assessment years 2009-10 and 2010-11.

2. The facts and issues arising in both these appeals are identical, however, for the sake of deciding the issue, reference is being made to the facts in I.T.A. No.1016 of 2018.

3. As many as five questions of law have been framed for our consideration:

4. Briefly stated the material facts in the backdrop of which the present controversy has arisen, are as under:

The Appellant/assessee is a partnership firm engaged in the business of road repairs/construction as an contractor for Municipal Corporation of Greater Mumbai (M.C.G.M). Return of income was filed relevant to the assessment year 2009-10 declaring a total income of Rs.37,04,810/-. The Assessing Officer (A.O.), during the course of assessment proceedings noticed that the assessee had claimed total purchases of Rs.88,53,059/- from various entities. Information was also received from the Sales Tax Department in respect of certain bogus parties. The TIN of the said parties matched with those from whom the purchases were alleged to have been made by the Appellant.

Notices under Section 133(6) of the Act were issued by the A.O. to which there was no compliance. The assessee is also stated to have failed to produce the said parties from the aforesaid ten entities. Consequently, the A.O. treated the amount of Rs.88,53,059/- as bogus purchases to inflate the expenditure and added back the same to the total income which was determined at Rs.1,25,57,870/- in its order under Section 143(3) r/w Section 147 of the Act, dated 10th March, 2014.

5. An appeal was preferred before the CIT(A) by the assessee, who concurred with the A.O. that purchases from the ten parties in question were bogus but held that the entire amount of such purchases could not be added to the total income and that only the profit element embedded and suppressed in the disputed purchases be assessed to income, which he estimated at 12.5%. The CIT(A) accordingly retained the addition to the extent of 12.5% while deleting the rest.

6. An appeal was preferred before the ITAT both by the assessee

as also the revenue, which was finally decided by virtue of the order impugned dated 20th January, 2017, which is impugned in the present appeal. The Tribunal upheld the view of the CIT(A) to treat the purchases from ten parties as bogus and also upheld the view expressed by the CIT(A) to sustain the addition to the extent of 12.5% of the amount of the disputed purchases relying upon the decision of Gujarat High Court in the case of ***CIT V/s. Bholanath Poly Fab Pvt. Ltd.***[1].

In a case involving a similar issue, even this Court in Income Tax Appeal No. 398 of 2018 decided on 18th July, 2022, had dismissed the appeal filed by the revenue on the ground that if the entire amount of purchases were to be held as non-genuine purchases, then it would not be possible to justify as to how the works allotted to the assessee for execution by the semi Government Agencies, could be completed.

7. Even in the present case the Appellant is a contractor, who had been allotted a subcontract for carrying out civil works of road and buildings repairs for which various types of building materials are stated to have been purchased from several suppliers including

1 [2013] 355 ITR 290 (Guj)

the ten suppliers, who are alleged to have been providing accommodation entries. It is not denied that the works allotted had been completed for the concerned agency, which would have been otherwise impossible, if the entire purchases made by the Appellant were to be held as non-genuine.

In our opinion the order passed by the Tribunal warrants no interference. No substantial questions of law arise in the present appeal.

This decision shall apply mutatis mutandis to I.T.A. No. 1026 of 2018. In the result, both the appeals are, accordingly, dismissed.

(KAMAL KHATA, J.) **(DHIRAJ SINGH THAKUR, J.)**